IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 109 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DJ DABHI

Versus

DY.COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 109 of 1996

MR IS SUPEHIA for Petitioner No. 1

Mr. H.M. Prachchhak, AGP for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 14/12/2004

ORAL JUDGEMENT

1. This petition is filed by the petitioner under Article 226 of the Constitution of India challenging the decision taken by the respondent to initiate a departmental proceeding against the petitioner for the alleged misconduct committed by him, on the ground that, on identical charges, a criminal case is pending in the Court of the learned Judicial Magistrate, First Class, Kapadwanj, for the offences punishable under Sections 307, 324, 325, and 504 read with 34 of the Indian Penal Code.

2. It is the case of the petitioner that the respondent, in spite of the request made by the petitioner and a preliminary statement made against the chargesheet issued by the respondent, did not accede to stay the departmental proceeding till the outcome of the criminal case for the identical charges against the petitioner, and, by the order dated 2nd January 1996, the respondent decided to proceed with the departmental proceeding pursuant to the charge sheet dated 20th October 1995 issued against the petitioner.

3. While issuing notice to the respondent, this Court directed that no departmental proceeding be continued further and, subsequently, on 12th March 1996, Rule was issued and the interim relief was continued.

4. The learned advocate for the petitioner has submitted that the action of the respondent initiating the departmental proceeding for identical charges in the subject matter, for which a criminal case is pending for trial in the Court of the learned Judicial Magistrate, First Class, Kapadwanj, is unwarranted, and, if the respondent is permitted to proceed further with the departmental enquiry, the chance of the petitioner to defend his case would be jeopardized and, in the fitness of things, the request made to the respondent not to proceed with the departmental enquiry ought to have been granted. According to the learned advocate for the petitioner, the refusal to accede to the request of the petitioner by the respondent amounts to unjust and arbitrary action and it is also contrary to the law laid down by the Apex Court in various cases, wherein, it is observed that it is advisable for the Disciplinary Authority to desist from continuing or proceeding with the departmental enquiry for identical charges which were levelled against the delinquent, when the case before the competent court is pending. Therefore, according to the learned advocate for the petitioner, the order passed by the respondent dated 2nd January 1996 refusing the request made by the petitioner not to proceed with the departmental enquiry, during pendency of the criminal trial, requires to be quashed and set aside.

5. Learned Assistant Government Pleader, Mr. Prachchhak, has submitted that there cannot be any straight-jacket formula to stay the proceedings of the departmental enquiry during pendency of the criminal case before the competent court for identical charges. He has further submitted that the judgment of the Apex Court is based on the facts and circumstances of that case and the same is not applicable to the present case. According to

learned Assistant Government Pleader, Mr. Prachchhak, the petitioner has been found, prima-facie, indulging into serious offences punishable under Sections 307, 324, 325, and 504 read with 34 of the Indian Penal Code, for which he can be tried by the competent criminal court. The departmental proceeding initiated pursuant to the charge sheet dated 20th October 1995 is with regard to the misconduct committed by the petitioner indulging into violence and for violation of Discipline & Conduct Rules, for which the petitioner can be punished under the Discipline & Appeal Rules of 1956. Therefore, according to learned Assistant Government Pleader, Mr. Prachchhak, the departmental proceedings are not required to be stayed.

4. I have heard the learned advocates for the parties. The departmental proceedings initiated against the petitioner have been stayed by this Court since 1996 and either of the party has no knowledge about the outcome of the criminal case lodged against the petitioner in the Court of the learned Judicial Magistrate, First Class, Kapadwanj. In the facts and circumstances of the case, and in view of the fact that, for all these nine years, the departmental proceedings initiated against the petitioner have remain stayed, at this juncture, I do not think it proper to allow the respondent to proceed with the departmental proceeding, and the impugned order dated 2nd January 1996 shall remain stayed till the verdict of the competent Court. However, it is open to the respondent to take appropriate action against the petitioner after outcome of the criminal case pending in the Court of the learned Judicial Magistrate, First Class, Kapadwanj, as the case may be. It is also open to the petitioner to challenge the decision of the respondent in case if any adverse order is passed against him by initiating fresh proceeding, that may be available to him. With these observations, Rule is made absolute to the aforesaid extent with no order as to costs.

(Anant S. Dave, J.)
(swamy)